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CITY OF SAN JOSÉ and
CITY COUNCIL OF SAN JOSÉ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF
CALIFORNIA ex rel. SAN JOSÉ POLICE
OFFICERS' ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ and CITY COUNCIL
OF SAN JOSÉ,

Defendants.

Case No.: 1-13-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

STIPULATED FACTS AND PROPOSED
FINDINGS, JUDGMENT AND ORDER

Complaint Filed: April 29, 2013
Trial Date: None Set

STIPULATION

These Stipulated Facts and Proposed Findings, Judgment and Order are entered into by and between Plaintiff San José Police Officers' Association ("SJPOA"), on the one hand, and the City of San José ("City"), on the other hand (collectively, the "Parties"), with respect to allegations and claims in SJPOA's Verified Complaint in *Quo Warranto* ("Complaint"). The Parties have engaged in extensive settlement negotiations and have reached agreement on the following stipulated facts and Order.

WHEREAS, the Parties recognize the overriding public interest in expedited resolution of these quo warranto proceedings and implementation of the Settlement Framework approved by the San José City Council on August 25, 2015 to restore and improve City services and sustainability of retirement plans.

1 WHEREAS, the parties have reached this Stipulation in order to: (1) conserve resources; and (2)
2 address the costs, time, and risks of continued litigation, both in this forum and in others; and (3) resolve
3 between these parties the question of whether a decision in this matter would be universally applicable
4 with respect to the requirements of the ballot measure known as “Measure B,” as applied to bargaining
5 units and employees outside of SJPOA should SJPOA’s quo warranto proceedings succeed in
6 invalidating Measure B based on the bargaining history that took place between the City and SJPOA.

7 WHEREAS, the Parties make this agreement in the interest of identifying a collaborative
8 solution which addresses the financial challenges facing the City with respect to funding retirement
9 obligations, as well as a mutual desire on the part of employees, retirees and City to make such benefits
10 sustainable.

11 IT IS THEREFORE STIPULATED AND AGREED by and between the Parties to the above-
12 referenced action, through their respective attorneys of record, that the following be adopted as the
13 findings and Order of this Court.
14

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16 Stipulated Facts

17 1. On June 3, 2011, SJPOA and the City entered into a tentative agreement entitled “Side
18 Letter Agreement Between the City of San José and San José Police Officers’ Association – Retirement
19 Reform.”

20 2. On June 9, 2011, George Beattie, then-President of SJPOA, and Robert Sapien, then-
21 President of the International Association of Firefighters, Local 230 (“IAFF”) wrote to Alex Gurza,
22 then-Director of Employee Relations for the City, requesting to commence joint bargaining over
23 retirement reform.

24 3. On June 20, 2011, the Parties entered into a Pledge of Cooperation and Agreement Upon
25 a Framework for Retirement Reform and Related Ballot Measure Negotiations (“Pledge and
26 Agreement”). The Pledge and Agreement essentially provided a set of ground rules for the Parties to
27 negotiate concurrently on the issues of retirement reform and related ballot measure(s). In addition to
28 SJPOA and the City, IAFF was a signatory to the Pledge and Agreement and negotiations occurred

1 between the City and both of those public safety Unions at the same table. A true and correct copy of
2 the Pledge and Agreement is attached hereto as **Exhibit 1**.

3 4. During the period spanning June 20, 2011 through October 28, 2011, SJPOA, IAFF and
4 the City met and conferred over retirement reform issues and/or related ballot measures on June 20, July
5 13, August 1, August 20, August 31, September 13, September 15, October 4, October 12, October 14,
6 October 20, October 24, and October 28, 2011.

7 5. SJPOA and IAFF issued a joint Retirement Reform Proposal on September 27, 2011.

8 6. During the period spanning June 20, 2011 through October 28, 2011, the CITY proposed
9 five (5) separate draft ballot measures to SJPOA and IAFF, which were provided on July 6, September
10 9, October 5, October 20, and October 27, 2011, respectively.

11 7. On October 31, 2011, having not reached an agreement on retirement reform and/or
12 related ballot measures, the Parties reached impasse pursuant to the terms of the Pledge and Agreement.

13 8. On November 11, 2011, SJPOA and IAFF issued a revised SJPOA/Fire Fighter
14 retirement reform proposal.

15 9. Pursuant to the terms of the Pledge and Agreement, which provided that the Parties
16 would proceed to impasse procedures if unable to reach agreement by October 31, 2011, SJPOA, IAFF
17 and the City participated in joint mediation sessions on November 15 and 16, 2011 before Mediator Paul
18 Roose of the California State Mediation and Conciliation Service.

19 10. At the conclusion of the November 15 and 16 mediation sessions, the Parties still had not
20 reached agreement on retirement reform and/or related ballot measures.

21 11. On November 18, 2011, SJPOA and IAFF issued new proposals significantly amending
22 their prior proposals. The Unions asked to resume bargaining based on their revised proposals.

23 12. Following SJPOA and IAFF's revised retirement reform proposal, the City issued a sixth
24 draft ballot measure proposal on November 22, 2011, which it provided to SJPOA and IAFF, informing
25 those bargaining units that the revised ballot measure would be presented to City Council for
26 consideration and possible adoption at the December 6, 2011 Council meeting. The November 22 ballot
27 measure made significant revisions from prior versions.
28

1 13. On December 1, 2011, SJPOA and IAFF sent the City another revised proposal and asked
2 to meet and confer about it.

3 14. On December 5, 2011, the City issued a seventh draft ballot measure, which was
4 presented to City Council for consideration and possible adoption at the December 6, 2011 Council
5 meeting. While the December 5 ballot measure was publically available before the December 6, 2011
6 City Council meeting, it was not provided to SJPOA and IAFF as part of the bargaining process. The
7 December 5 version of the ballot measure made additional concessions as compared to the November
8 22 version.

9 15. On December 6, 2011, the City Council adopted Resolution No. 76087, which approved
10 the City's last proposed ballot measure (i.e., December 5 version) for placement on the June 2012 ballot.

11 16. On December 13, 2011, SJPOA and IAFF wrote to the City asking to resume
12 negotiations or in the alternative engaging in further mediation.

13 17. Thereafter, SJPOA, IAFF and the City participated in a second joint mediation, before
14 mediator Douglas Collins, on January 17, January 18, February 6, and February 10, 2012, in an effort to
15 reach agreement on retirement reform and/or related ballot measures prior to the proposed ballot
16 measure previously adopted by the City Council being placed before the voters.

17 18. At the conclusion of the January 18 through February 10 mediation sessions, the Parties
18 still had not reached agreement on retirement reform and/or related ballot measures.

19 19. On February 21, 2012, the City proposed an eighth draft ballot measure to SJPOA and
20 IAFF, and informed those bargaining units that the revised ballot measure would be presented to the
21 City Council for consideration and possible adoption at the Council meeting scheduled for March 6,
22 2012. If approved, the revised ballot measure would replace the version previously adopted by the City
23 Council on December 6, 2012.

24 20. On February 24, 2012, the SJPOA requested to bargain about the February 21, 2012
25 ballot measure. The City responded to the SJPOA's letter on February 27, 2012, but the City and Unions
26 did not engage in further negotiations.
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1 21. On March 3, 2012, SJPOA and IAFF issued a further revised SJPOA/Fire Fighter
2 retirement reform proposal.

3 22. On March 5, 2012, the City responded to SJPOA and IAFF's March 3 proposal via letter,
4 but the parties did not engage in further negotiations.

5 23. On March 6, 2012, the San José City Council adopted Resolution No. 76158, which
6 repealed Resolution No. 76087, and instead approved the February 21, 2012 proposed ballot measure for
7 placement on the June 5, 2012 ballot.

8 24. On June 5, 2012, that ballot measure, which had become known as Measure B, was
9 passed by the voters.
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11 Stipulated Findings

12 1. The California Supreme Court has held that a charter city (such as the City of San José)
13 must comply with the meet and confer requirements of the Meyers-Milias-Brown Act ("MMBA") –
14 which govern relations between local public agency employers and local public employee organizations
15 – before placing an initiative measure on the ballot that would affect matters within the scope of the Act.
16

17 2. It is clear from the Parties' submissions and recitations of the relevant facts that the
18 Parties did, in fact, meet and exchange proposals over a period of several months, reaching an agreed-
19 upon impasse on October 31, 2011.

20 3. The MMBA's "duty to bargain requires the public agency to refrain from making
21 unilateral changes in employees' wages and working conditions until the employer and employee
22 association have bargained to impasse " If an impasse exists, however, it may be broken, and the
23 duty to bargain revived, by a change in circumstances that suggests that bargaining may no longer be
24 futile.

25 4. In this case, the issue is whether impasse existed and, if it did, whether it had been broken
26 by post-impasse ballot changes made by the City and whether the City Council should have negotiated
27 further with SJPOA prior to placing the matter before the voters.
28

1 Stipulated Conclusions

2 1. Here, both Parties met and conferred in good faith before reaching an agreed-upon
3 impasse on October 31, 2011.

4 2. However, continued modification of the proposed ballot language after impasse –
5 including concessions made by the City – created a further obligation to meet and confer before placing
6 Measure B on the ballot.

7 3. The City’s failure to do so is deemed to be a procedural defect significant enough to
8 declare null and void Resolution 76158, which placed Measure B on ballot.
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13 [Proposed] Stipulated Judgment and Order

14 In light of the Stipulated Facts, Findings and Conclusions set forth above, and pursuant to the
15 Parties’ desire to settle and resolve the disputes between them through the terms of this Stipulation, the
16 Parties respectfully submit the attached Proposed Stipulated Judgment and Order (**Exhibit A**), which is
17 incorporated herein.
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1 Dated: March 2, 2016

RENNE SLOAN HOLTZMAN SAKAI LLP

2
3 By: 

Charles D. Sakai

Steven P. Shaw

Attorneys for Defendants

CITY OF SAN JOSE and

CITY COUNCIL OF SAN JOSE

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5
6
7 Dated: March 2, 2016

MESSING, ADAM & JASMINE LLP

8
9 By: 

Gregg McLean Adam

Attorneys for Relator-Plaintiff

SAN JOSE POLICE OFFICERS' ASSOCIATION

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12 APPROVED AS TO FORM:

13
14 Dated: March 2, 2016

ATTORNEY GENERAL FOR THE STATE OF
CALIFORNIA

15
16
17 By: 

Marc J. Nolan

Deputy Attorney General

RENNE SLOAN HOLTZMAN SAKAI LLP
Attorneys at Law

EXHIBT 1

ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

(Evidence Code Section 1152)

Settlement Discussion Framework Language

The City of San Jose, the San Jose Fire Fighters, IAFF Local 230, and the San Jose Police Officers' Association have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The parties have reached the below framework for a tentative settlement of San Jose Police Officers' Association v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-22926, Sapient, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-13-CV-225928 (and associated actions), The People of the State of California ex rel. San Jose Police Officers' Association v. City of San Jose, Santa Clara County Superior Court, No. 1-13-CV245503 (quo warranto proceedings), International Association of Firefighters, Local 230 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-GE-969-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.

It is understood that this settlement framework is subject to a final overall global settlement. In the event the settlement framework is not accepted, all parties reserve the right to modify, amend and/or add proposals. Each individual item contained herein is contingent on an overall global settlement/agreement being reached on all terms, by all parties/litigants (including the retirees), and ratified by union membership and approved by the City Council.

MARCH 11th LETTER

In accordance with Mayor Sam Liccardo's letter on behalf of the City Council to all bargaining units dated March 11, 2015, inclusive of the direction from Councilmember Don Rocha's March 6, 2015, memorandum, the City Council is willing to pursue settlement of Measure B litigation through a quo warranto process in 2015, contingent on the Council's satisfaction that the following conditions have been met before the quo warranto process begins:

- 1. Agreement on an alternative strategy to implement pension reform and replace Measure B. Such agreement must achieve all reform objectives that the Council deems necessary to the public interest, including improved city services, and the sustainability of our retirement plans.*
- 2. The quo warranto strategy is legally viable and can be carried out on a timeline that would allow the Council sufficient time to pursue a 2016 ballot measure should a quo warranto strategy fail.*
- 3. All bargaining units have agreed to pursue the quo warranto strategy.*
- 4. The Council is satisfied that the quo warranto strategy does not impair the public interest.*

If agreements are not reached to end litigation with all plaintiffs in Measure B litigation, or if the process of quo warranto does not permit the replacement of Measure B with this or any other agreement, the City Council, Local 230 and the POA shall request a stay of all Measure B litigation to which they are involved in to permit this agreement to appear on a 2016 ballot as a measure to replace Measure B in its entirety with respect to police and fire participants of the Police & Fire Retirement Plan. If this ballot measure is enacted, all Measure B litigation involving Local 230, the POA and the City would be terminated and dismissed.

Retirement Memorandum of Agreement

1. The parties (The City of San Jose, San Jose Police Officers' Association and San Jose Fire Fighters, IAFF Local 230) shall enter into a Tripartite Memorandum of Agreement to memorialize all agreements related to retirement. The Tripartite MOA shall expire June 30, 2025.
2. The Tripartite MOA will be a binding agreement describing the terms of the final agreement between the parties and will be subject to any agreed-upon reopeners herein.

The current Tier 2 retirement plans for Police and Fire employees will be modified as follows:

1. Pension benefit based upon a back-loaded accrual rate as follows:
 - a. For each year from years 1-20: 2.4% per year
 - b. For each year from years 21-25: 3.0% per year
 - c. For each year 26 and above: 3.4% per year
2. Retirement Age
 - a. The eligible age for an unreduced pension benefit will be age 57
 - b. The eligible age for a reduced pension benefit will be age 50. The reduction for retirement before age 57 will be 7.0% per year, prorated to the closest month.
3. 80% cap
 - a. The maximum pension benefit will be 80% of an employee's final average salary
4. Three-year final average salary
5. A member is vested after 5 years of service
6. No retroactive pension increases or decreases

- a. Any such changes in retirement benefits will only be applied on a prospective basis.
- 7. No pension contribution holiday
- 8. Pensionable pay will include base pay, holiday in lieu pay, EMT pay, anti-terrorism training pay, POST pay, and base FLSA pay as per Tier 1 members.
- 9. Current Tier 2 sworn employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 16a (returning Tier 1).
 - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
- 10. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
- 11. Tier 2 cost sharing
 - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
 - b. In the event an unfunded liability is determined to exist for the Police and Fire Tier 2 retirement plans, Tier 2 employees will contribute (the "Ramp Up") toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between employee and employer
 - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability
- 12. Cost of Living Adjustment (COLA)

- a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) or 2.0%, whichever is lower
 - b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
13. Disability Benefit (Tier 2)
- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to the greater of:
 - i. 50% of final compensation;
 - ii. A service retirement allowance, if he or she qualified for such;
 - iii. An actuarially reduced factor, as determined by the plan's actuary, for each quarter year that his or her service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not qualified for a service retirement.
 - b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
 - i. If less than age 50: 1.8% per year of service; or
 - ii. If older than age 50: The amount of service pension benefit as calculated based upon the service pension formula.
14. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.
15. Tier 2 members will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving

spouse or domestic partner in the event of the retiree's death after retirement.

- a. Tier 2 members will be provided with survivor benefits in the event of death before retirement. These benefits will be the same as Tier 1 members but reduced to reflect the new 80% pension cap versus the current 90% pension cap.

16. "Classic" Lateral will become Tier 1, including former San Jose Fire Department /San Jose Police Department sworn employees

- a. Former Tier 1 sworn City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
- b. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 sworn City employees who have since been rehired will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
- c. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.
- d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2.

17. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

18. The City and the Unions agree to work with their actuaries to jointly request that the Police and Fire Retirement Board of Administration and its actuary carefully consider retirement rate actuarial assumptions with regard to the new Tier 2 plan. Specifically, the parties will request that the Board and its actuary incorporate retirement rate assumptions similar to the CalPERS retirement rates of the similarly designed CalPERS PEPRA plan rather than that of the existing San Jose Police and Fire Tier 1 plan.

Retiree Healthcare - All provisions below are contingent on final costing by the City's Actuary and review for legal and/or tax issues

1. Close the current defined benefit retiree healthcare program to new employees and current Tier 2 employees
2. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
3. New lowest cost medical plan
 - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members

- b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
 - c. The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
4. Potential Tier 1 opt-out
- a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.
5. Enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers
6. The current defined benefit retiree healthcare plan is modified to enable retired members to select an "in lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis,

or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

7. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
8. The VEBA contribution rate for all new hires and Tier 2 members will be 4.0% of base pay. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 5.0% of base pay.
9. Members who remain in the Defined Benefit retirement healthcare plan will contribute 8.0% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 11% of payroll, the City may decide to contribute a maximum of 11%.

10. The parties have been advised that the difference between the defined benefit contribution rate (8.0%) and the VEBA opt-out contribution rate (5.0%) will be taxable income.
11. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
12. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for their prior contributions. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.

13. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member and is eligible for Medicare (usually age 65).
- a. Qualifications - The member must not be eligible for an unreduced service retirement.
 - b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
 - c. Upon reaching Medicare eligibility, the benefit will cease
 - d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
 - e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

Disability Definition and Process

- 1. Reinstate the previous City definition for disability for all sworn employees
- 2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code § 3.36.920 A (4).
- 3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless

the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings
6. Independent panel of experts appointed by 6 of 9 retirement board members will evaluate and approve or deny disability retirement applications
 - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel
 - b. Each member shall have a four-year term and meet the following minimum qualifications
 - i. 10 years of practice after completion of residency
 - ii. Practicing or retired Board Certified physician
 - iii. Not a prior or current City employee
 - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
 - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
 - vi. Varying medical experience
 - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
 - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

confirm that the member is still incapacitated or if the member has the ability to return to work

7. Administrative law judge

- a. A decision to grant or deny the disability retirement made by the independent medical panel may be appealed to an administrative law judge.
- b. Applicant or City has forty-five (45) days to appeal a decision made by the independent medical panel. The appeal hearing must commence within ninety (90) days of the notice of appeal, unless a later date is mutually agreed to by the parties.
- c. The decision rendered by the administrative law judge is to be based on the record of the matter before the independent medical review panel.
- d. The decision of the administrative law judge will be a final administrative decision within the meaning of Section 1094.5 of the California Code of Civil Procedure.

8. Modified Duty (POA – Article 39)

- a. The City and the POA will continue to discuss the modified duty positions during collective bargaining
- b. While these discussions take place, the number of modified duty positions will be increased to 30
- c. The independent medical review panel will evaluate the status of the employees in the modified duty program on a yearly basis until the program is modified through bargaining

9. Worker's Compensation Reform

- a. For Tier 2 participants, the workers' compensation offset currently in place for Federated Plan participants will apply to a maximum aggregate total of \$10,000.00 per Tier 2 employee in workers'

compensation cash disability benefit awards only using the same pension benefit offset formula.

- b. In an effort to streamline the workers' compensation process, reduce costs, decrease the number of work related injuries through prevention and expedite the return to work of those injured or ill, the parties agree to convene a Public Safety Wellness Improvement Committee to discuss modifications to, or creation of, wellness and/or workers' compensation policies, procedures and protocols.

Supplement Retiree Benefit Reserve (SRBR)

1. Continue elimination of SRBR
 - a. The funds credited to the SRBR will continue to be credited to the Police and Fire Department Retirement Plan to pay for pension benefits
2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement
 - a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.

- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 55.
- e. In the event of litigation by a retired member or members of POA and/or IAFF Local 230 challenging this provision of the Settlement Agreement against POA and/or IAFF Local 230, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend POA and/or IAFF Local 230 with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

Memoranda of Agreement (MOA)

1. This agreement is contingent upon reaching a successor MOA agreement with the POA.

Attorney's Fees

- ## Implementation Timeline

- This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by SJFF Local 230 or SJPOA. If this agreement is implemented through the quo warranto process, the parties agree to discuss provisions for voter approval of benefits and actuarial soundness for consideration of a 2016 ballot measure to put those provisions into the City Charter.

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EXHIBIT A

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CITY COUNCIL OF SAN JOSÉ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF
CALIFORNIA ex rel. SAN JOSÉ POLICE
OFFICERS' ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ and CITY COUNCIL
OF SAN JOSÉ,

Defendants.

Case No.: 1-13-CV-245503

EXEMPT FROM FEES (GOV. CODE § 6103)

[PROPOSED] STIPULATED JUDGMENT AND
ORDER

Complaint Filed: April 29, 2013
Trial Date: None Set

In this action, Plaintiff San José Police Officers' Association ("SJPOA") filed a Verified Complaint in *Quo Warranto* against Defendants City of San José and City Council of San José ("City") (collectively, "the Parties") on April 29, 2013, alleging various defects in bargaining over the pension reform ballot measure (Resolution No. 76158) that subsequently became known as Measure B. The Court has been advised that, after extensive negotiations, the Parties have reached a Settlement Framework and Agreement of this action and related proceedings, and has received Stipulated Facts and Proposed Findings executed by the Parties, pursuant to the Settlement Framework and Agreement. The Court, having considered the Stipulated Facts and Proposed Findings and the other papers and pleadings filed, and good cause existing therefor, hereby issues the following as its Stipulated Judgment and Order herein.

Factual Findings of the Court

1. The California Supreme Court has held that a charter city (such as the City of San José) must comply with the meet and confer requirements of the Meyers-Milias-Brown Act (“MMBA”) – which govern relations between local public agency employers and local public employee organizations – before placing an initiative measure on the ballot that would affect matters within the scope of the Act.

2. It is clear from the Parties' submissions and recitations of the relevant facts that the Parties did, in fact, meet and exchange proposals over a period of several months, reaching an agreed-upon impasse on October 31, 2011.

3. The MMBA's "duty to bargain requires the public agency to refrain from making unilateral changes in employees' wages and working conditions until the employer and employee association have bargained to impasse " If an impasse exists, however, it may be broken, and the duty to bargain revived, by a change in circumstances that suggests that bargaining may no longer be futile.

4. In this case, the issue is whether impasse existed and, if so, whether it had been broken by post-impasse ballot changes made by the City and whether the City Council should have negotiated further with SJPOA prior to placing the matter before the voters.

Conclusions

1. Here, both Parties met and conferred in good faith before reaching an agreed-upon impasse on October 31, 2011.

2. However, continued modification of the proposed ballot language after impasse – including concessions made by the City – created a further obligation to meet and confer before placing Measure B on the ballot.

3. The City's failure to do so is deemed to be a procedural defect significant enough to declare null and void Resolution 76158, which placed Measure B on ballot.

1 Based on the foregoing, IT IS ORDERED that Resolution 76158, which placed Measure B on
2 ballot, is null and void due to a procedural defect in bargaining.

3 IT IS FURTHER ORDERED that Measure B was not properly placed before the electorate and it
4 and all of its provisions are therefore invalid.

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7 Dated: _____

8 Hon. Beth A.R. McGowen
9 Judge of the Santa Clara County Superior Court
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